APPENDICES

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term, 1995,
Court of Special Appeals)

ORDER

The Court having considered the motion for reconsideration in the above-entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, DENIED.

/s/ Robert M. Bell
Chief Judge

Date: Dec. 11, 1996

[Filed Nov. 13, 1996]

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term, 1995,
Court of Special Appeals)

REQUEST FOR RECONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS

The ORDER denying the petition for certiorari because "there has been no showing that review by certiorari is desirable and in the public interest" is puzzling for the following reasons:

(1) With regard to the issue of "desirable" raised by the Court, the petition shows violations of Law by Defendants and describes injuries and proximate damages caused as a result of the violations by the Defendants. The Defendants are therefore liable. These violations of law and resulting damages under Maryland and Federal Law must not remain concealed and "UNREPORTED" without a trial by jury on the merits as demanded by Due Process Of Law.

(2) As to the issue of "public interest", the petition states that "the decisions by the Circuit Court and the Court of Special Appeals are in conflict with and contrary to public policy in Maryland". It also cites Maryland's Legislative Policy based upon the finding by the General Assembly "That exposure to asbestos, a known carcinogenic agent, creates a significant hazard to the health of the people of this State". This finding is consistent with the U.S. Code Title 15—COMMERCE AND TRADE, Subchapter II—ASBESTOS HAZARD EMERGENCY RESPONSE which also specifies that "It shall be unlawful for any person to fail or refuse to comply with any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter".

The cooperative housing area in Leisure World occupies approximately 70 acres and consists of 93 buildings containing 898 residential units.

Exposure to asbestos fibers at Leisure World by residents and visitors, including children and grandchildren, for the past 25 years from apartment buildings and rows of attached townhouses of the Cooperative Housing Area, is a well recognized health hazard causing personal injuries for which TORT remedies are available under Maryland and Federal Law.

For example, it was an obstruction of justice by Defendants, when Petitioner's request to hire a Maryland

licensed laboratory to take air samples and measure the density of air-borne asbestos fibers circulating in Unit 82C *during April 1993* and also measure the density of asbestos fibers in the surrounding outside air was denied, notwithstanding the fact that Petitioner had offered to pay for those tests at that time.

Furthermore, the record in this case includes a letter from Robert E. Sullivan, General Manager of Leisure World of Maryland Corporation dated *November 16, 1993* to the Executive Director, Montgomery County Office of Consumer Affairs, wherein he states, with reference to the purchase of Unit 82-C, as follows: "Due to the fact that Chrysotile is harmless in its present state and the current owner, Mr. Walker, has installed new carpet and padding over the tiles making them less harmless, we did not write a disclosure statement concerning the tile to the present contingent contract holder. If disclosure of the information is a County, State, or Federal requirement, please advise."

QUESTION:—Since approximately 75% of the asbestos tiles throughout the Unit (first and second floors) were in friable condition ranging from cracked to broken into pieces which varied in size from large to small, and included piles of dust around the carpet pin holders throughout the house, upstairs and downstairs *during April 1993,* WHICH TILES WERE THE NEW CARPET AND PADDING INSTALLED OVER *after April 1993 and prior to November 16, 1993*?

CONCLUSION

For the foregoing reasons, Petitioners respectfully request reconsideration, and that the Petition for a writ of certiorari to the Court of Special Appeals be granted for the reasons cited and argued in the petition.

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Petitioner
for Both Petitioners
9501 Avenel Road
Silver Spring, Maryland 20903
(301) 434-8106

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term 1995,
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the motion to stay filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and motion to stay be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: November 7, 1996

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 707

September Term, 1995

HERMAN I. SHALLER, *et ux.*

v.

ARTHUR WALKER

No. 1597

September Term, 1995

HERMAN I. SHALLER, *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

WILNER, C. J.,
FISCHER,
MURPHY,

JJ.

Per Curiam

Filed: June 7, 1996

This consolidated case involves Herman and Cora Shaller's (Shallers) appeal from two separate orders issued by two judges in the Circuit Court for Montgomery County. In the first order, Judge Thompson granted Arthur A. Walker's Motion for Summary Judgment. In the second order, Judge Ryan granted Leisure World Community Corporation, Leisure World of Maryland Corporation, Montgomery Mutual Inc., Robert E. Sullivan, Rita S. Ramsey, and Rick Pitman's (Leisure World) Motion to Dismiss the Shallers' amended complaint. The Shallers sued Mr. Walker, Leisure World, and Prudential Preferred Properties [1] for, *inter alia,* damages allegedly caused by: (1) exposure to asbestos; and (2) interference with a contractual relationship. The Shallers present several questions for our review, which we have combined and reworded as follows:

I. Did Judge Thompson err by granting Mr. Walker's motion for summary judgment?

II. Did Judge Ryan err by granting Leisure World's motion to dismiss?

FACTS

The Shallers wanted to buy a cooperative unit (the townhouse) located at Leisure World and owned by Mr. Walker's mother, Jeannette Walker. Mr. Walker, who had power of attorney over Mrs. Walker's assets, entered into a listing agreement with Prudential in order to sell the townhouse. On or about February 12, 1993, Mr. Walker signed the sales contract for the townhouse with the Shallers.

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[1] Prudential is not a party to this appeal.

On April 2, 1993, the Shallers conducted an inspection of the townhouse without the assistance of anyone from Leisure World or Prudential. They spent two hours inspecting the townhouse and made a list of the items that they wanted repaired. One of these items included repairs to tiles in the foyer.

Prudential later informed the Shallers that they could not repair the "vinyl asbestos tiles" that were in the foyer. Subsequently, the Shallers had the tiles tested for asbestos and these tests revealed the presence of "chrysotile asbestos." After receiving the information about the presence of asbestos in the townhouse, the Shallers declared their sales contract with Mr. Walker null and void.

The Shallers sued Leisure World and Mr. Walker for: (1) "Fraud and Deceit;" (2) "Conspiracy to Interfere with Plaintiffs Prospective Advantage of Living in Leisure World;" (3) "Gross Negligence;" (4) "Fraudulent Misrepresentation;" (5) "Reckless Abuse;" and (6) "Wrongful Breach of Contract." On March 27, 1995, Judge Thompson granted Mr. Walker's motion for summary judgment and ordered the Shallers to pay Mr. Walker's attorneys' fees.

On May 31, 1995, Judge Ryan granted Leisure World's motion to dismiss the Shallers' complaint. Judge Ryan, however, gave the Shallers thirty days to amend their complaint. The Shallers filed an amended complaint that included only two causes of action: (1) "Interference with Contractual Relationship;" and (2) "Unlawful Exposure to Friable Asbestos." After a hearing, Judge Ryan granted Leisure World's motion to dismiss the Shallers' amended complaint with prejudice. Judge Ryan also ordered the Shallers to pay Leisure World $2,000 in attorneys' fees. The Shallers filed a timely appeal with this Court to challenge both Judge Thompson's and Judge Ryan's orders. Subsequently, the Shallers' two requests for appellate review were consolidated.

DISCUSSION

I. Judge Thompson's Order

In their brief, the Shallers did not discuss Judge Thompson's finding that Walker could not be sued because he was acting under the power of attorney for Mrs. Walker. Instead, the Shallers presented a series of pseudo-legal cavils that they believe support their position that Judge Thompson erred in granting Mr. Walker's summary judgment motion.

An agent for a disclosed principal is not liable for the purported acts of the principal the agent represents. *A.S. Abell Co. v. Skeen*, 265 Md. 53, 56 (1972). An attorney who does work for a client under the power of attorney is considered an agent of that principal-client. *King v. Bankerd*, 303 Md. 98, 105 (1985). Accordingly, attorneys acting under a power of attorney are not liable in suits based on defects in the property of the principal for whom the attorney is acting.

In this case, Mr. Walker had a power of attorney over Mrs. Walker's assets and signed the sales contract for Mrs. Walker pursuant to his power of attorney. That agency relationship between Mr. Walker and his mother was fully disclosed to the Shallers. Mr. Walker even signed the sales contract as "POA for Jeannette Walker." Thus, because Mr. Walker and his mother had a principal-agent relationship with respect to the townhouse and that relationship was disclosed to the Shallers, Walker was not liable for alleged damages caused by the Shallers' exposure to asbestos.

II. Judge Ryan's Order

The Shallers argue that Leisure World (1) intentionally interfered with the contract between Mr. Walker and the Shallers; and (2) is liable for alleged injuries incurred by the Shallers when they were exposed to asbes-

tos fibers during their two-hour inspection of the townhouse. Leisure World counters that the Shallers failed to prove the elements for intentional interference with a contract and intentional infliction of emotional distress.

If it is to withstand a motion to dismiss, a complaint must contain sufficient facts which, if taken as true, would entitle the plaintiff to relief. *See Davis v. DiPino,* 337 Md. 642, 648 (1995). If the complaint does not contain sufficient facts to prove a cause of action, the complaint must be dismissed. Thus, in the case *sub judice,* our focus is whether the Shallers' amended complaint contains sufficient factual allegations which, if taken as true, would entitle them to relief.

A. Interference with a Contract

A complaint for intentional interference with a contract must allege that a "third party, without justification and for an unlawful purpose, intentionally interfered with the business relationship between the plaintiff and another, causing the plaintiff actual damage." *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.,* 98 Md. App. 123, 146-147 (1993) (emphasis omitted). In this case, the facts alleged in the Shallers' amended complaint did not establish an intentional interference with a contract. The Shallers failed to allege that Leisure World intentionally and improperly interfered with the performance of the sales contract or facts that would demonstrate such interference. Additionally, the Shallers failed to allege that Leisure World acted maliciously, or with the intent to damage the Shallers.

B. Exposure to Asbestos

The Shallers argue that "the Tort of asbestos exposure by Leisure World Defendants . . . was an Intentional Tort resulting in Mental Anguish." Neither Maryland nor any other jurisdiction to our knowledge recognizes the tort of

"asbestos exposure." Thus, we will limit our discussion to the Shallers' claim of intentional infliction of emotional distress, which is the only tort listed in count two of the amended complaint.

In order to establish a claim of intentional infliction of emotional distress a plaintiff must, *inter alia,* demonstrate either a severely disabling emotional response or a physical injury. *Harris v. Jones,* 281 Md. 560, 570 (1977).[2] The Court of Appeals elaborated on this requirement as follows:

> Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. *It is only where it is extreme that the liability arises. . . . The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.*

Id. at 570-571 (quoting *Restatement (Second) on Torts* § 46, cmt. j (1965)) (emphasis added). The Court of Appeals went on to warn that:

> . . . [N]ot . . . every emotional upset should constitute the basis of an action. Indiscriminate allowance

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[2] To establish a claim for intentional infliction of emotional distress, a complaint must state that "(1) that conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe." *Caldor v. Bowden,* 330 Md. 632, 642 (1993) (quoting *Harris v. Jones,* 281 Md. 560, 566 (1977)).

> of actions for mental anguish would encourage neurotic overreactions to trivial hurts, and the law should aim to toughen the psyche of the citizen rather than pamper it.

Id. at 571 (quoting *Knierim v. Izzo,* 22 Ill. 2d 73 (1961)).

In this case, the Shallers failed to allege that they had at any time experienced severe emotional distress. The amended complaint only states that the Shallers suffer from "mental anguish" and "painful . . . physical symptoms." Thus, the Shallers' amended complaint does not provide the requisite detailed indicia of severe distress that, if taken as true, would entitle them to relief.

Additionally, a plaintiff's severe emotional distress must be "reasonable and justified under the circumstances, and there is no liability where the plaintiff has suffered exaggerated and unreasonable emotional distress. . . ." *Id.* at 571 (quoting *Restatement (Second) of Torts* § 46, cmt. j); *see also Pierce v. Johns-Manville Sales Corp.,* 296 Md. 656, 666 (1983) (stating that "[i]n Maryland, recovery of damages based on future consequence of an injury may be had only if such consequences are reasonably probable or reasonably certain"); *cf. Faya v. Almaraz,* 329 Md. 435 (1993) (finding that a plaintiff's claim of emotional distress, due to a surgeon not telling the plaintiff he had AIDS before operating on the plaintiff, was reasonable).

In this case, based on the case law and scientific understanding of asbestos, it is unreasonable for the Shallers to be worried about future asbestos related consequences. Mere exposure to asbestos, to the minor extent described here, is not enough to substantiate a claim for mental distress. Simply put, the Shallers' amended com-

plaint is devoid of any facts that would support their claim.[3]

III.

Maryland Rule 1-341 states:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party . . . to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

With respect to the circuit court judges' awards of attorneys' fees, it is enough to say that we cannot imagine a case where the award of attorneys' fees was more justified and supported by the record.

For the aforegoing reasons, the decisions of the circuit court are affirmed.

JUDGEMENTS AFFIRMED.
APPELLANTS TO PAY COSTS.

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[3] It would be more reasonable for Mr. Walker or the parties at Leisure World to claim emotional distress due to the Shallers' intentional and reckless efforts in this case than it would for the Shallers to claim emotional distress because of their exposure.

APPENDIX C

[Filed Mar. 27, 1995]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER
9501 Avenel Road,
Silver Spring, Maryland 20903,
Plaintiffs,

v.

ARTHUR A. WALKER,
3608 Sundown Farms Way,
Olney, Maryland 20832

and

THE PRUDENTIAL PREFERRED PROPERTIES,
10801 Lockwood Drive,
Silver Spring, Maryland 20901

and

LEISURE WORLD COMMUNITY CORP., LEISURE WORLD OF MARYLAND CORP., MONTGOMERY MUTUAL, INC., ROBERT E. SULLIVAN, RITA S. RAMSEY, RICK PITMAN, 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906,

Defendants.

ORDER

Upon consideration of the Arthur A. Walker's Motion for Summary Judgment and the Opposition, if any,

thereto, it is this 24th day of March, 1995, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that Arthur A. Walker's Motion for Summary Judgment be, and is hereby, granted; and it is further

ORDERED, that judgment be, and is hereby, entered in favor of Arthur A. Walker; and it is further

ORDERED, that Herman I. and Cora E. Shaller reimburse Arthur A. Walker for attorneys fees and costs that he has incurred in defending against this litigation.

/s/ Durke G. Thompson
Judge, Circuit Court for
Montgomery County, Maryland

Civil Information for Case #130984

HERMAN I. SHALLER

vs.

ARTHUR A. WALKER

DOCKET INFORMATION

05/31/95 #42 DA 06/02/95

HEARING ON DEFENDANTS', LEISURE WORLD COMMUNITY CORPORATION, LEISURE WORLD OF MARYLAND CORPORATION, MONTGOMERY MUTUAL INC., ROBERT E. SULLIVAN, RITA S. RAMSEY AND RICK PITMAN'S MOTION TO DISMISS THE COMPLAINT (#15) (RYAN, J.) GRANTED WITH THIRTY (30) DAYS LEAVE TO AMEND. TAPE 5-31-95-15-266.8-301.0
JUDGE: J RYAN
TYPE: RULING STATUS: GRANTED
MOTION: 15 OPPOSITION: 17
TAPE #: 15-053195 START #: 266.8
STOP #: 301.0 # TAPES: 1
NO ORDER WAS ISSUED

09/07/95 #55 DD 09/12/95

HEARING ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT (#49) (RYAN, J.) GRANTED WITH PREJUDICE; COURT FURTHER AWARDS ATTORNEYS FEES IN THE AMOUNT OF TWO THOUSAND ($2,000.00) DOLLARS AGAINST BOTH PLAINTIFFS.
JUDGE: J RYAN
TYPE: DOCKET
TAPE #: 15-090795 START #: 294.0
STOP #: 346.3 # TAPES: 1
NO ORDER WAS ISSUED

[Filed Jul. 9, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER TO SHOW CAUSE

Upon consideration of defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. and Cora E. Shaller in Contempt of Court and any Opposition thereto, it is this 9th day of July, 1996, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that plaintiffs Herman I. and Cora E. Shaller shall appear before this Court on the 8th day of August, 1996 at 10:00 a.m. for ½ hour to show why they should not be held in Contempt of Court for failure to comply with the Court's Order of March 24, 1995; and it is further

ORDERED, that defendant Arthur A. Walker serve a copy of this order upon plaintiffs, Herman I. and Cora E. Shaller, no later than the 29th day of July, 1996.

/s/ Ann A. Harrington
Judge, Circuit Court for
Montgomery County, Maryland

[Filed Jul. 29, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER,
Defendant.

REPORT TO THE COURT PERTINENT TO ORDER TO SHOW CAUSE

Submitted herewith for the record, pertinent to the Order that Plaintiffs appear before this Court on the 8th day of August, 1996, are Plaintiffs' notes of their 911 call for help on the night of July 22, 1996.

It was after 9:30 PM on 7/22/96 (Monday), that a relentless knocking on my front door and simultaneously, a continuous ringing of my door bell began.

After about 15 minutes, my wife and I became *terrorized and terrified*, so I dialed 911 and requested that a police patrol car be dispatched to our house.

The persistent knocking and door bell ringing did not stop, so I dialed 911 again and was assured that a patrol car was on its way.

While I was still on the phone with the dispatcher, my wife who was looking out of the window told me that the lights of the car just went on and that the car made a fast U turn speeding away.

Within seconds later, the police patrol car came to our house.

I opened my front door and met the officer, told him what had happened, and that he had just missed the car which prompted my call for help.

On 7/23/96 (Tuesday) at about 4:30 PM, my wife answered the telephone and told me to get on the line.

It was a call from "Gail" who identified herself as working for the Circuit Court and told us that she had some papers to deliver to us from the Court; that they were documents which the Court had already mailed to us. When I told her that we had not received any documents from the Circuit Court recently, she said that those which she has to deliver to us were those that "count". She then said that she could deliver the papers that evening and I agreed to have her come to the house no later than 6:30 PM.

She arrived at about 6:20 PM. I met her on my front porch and noticed that the car she came in had a driver and looked like the same car that was parked in the same spot the night before.

When she gave me the Court's ORDER TO SHOW CAUSE, and I saw that Defendant Arthur A. Walker was ORDERED by the Court to serve a copy of this order upon Plaintiffs, I asked her if anyone tried to deliver these papers last night, she said "yes".

When I asked her for her identification she showed me her driver's license.

When I asked her for her identification as working for the Circuit Court she said that she was a process server delivering the papers for the Court.

She did not respond when I asked why I was not notified that someone was coming to deliver the papers yesterday like she did today?

Given the Court's Order that Defendant Arthur A. Walker serve a copy upon Plaintiffs, what was Mr.

Walker's role in the act of terrorism and terrifying us at night on 7/22/96, necessating the 911 call for help?

Who was the person or persons knocking on our door, and, who was the driver of the car at 10 PM on 7/22/96.

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Plaintiff
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106

[Filed Jul. 6, 1995]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Civil No. 130984

HERMAN I. SHALLER *et al.*,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of Herman I. Shaller's Motion pursuant to Rule 2-632(e), and any opposition thereto, it is this ——— day of ——— 1995, by the Circuit Court for Montgomery County, Maryland.

ORDERED, that enforcement of the Judgment filed on 3/27/95 is hereby stayed during pendancy of the Appeal in the Court of Special Appeals.

DENIED—Appeal is premature—No Amount Has been entered or awarded Against Plaintiff.
July 5, 1995

/s/ William M. Cave
Judge
Circuit Court for
Montgomery County, Maryland

[Filed Aug. 16, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. Shaller and Cora E. Shaller, in Contempt of Court, the Opposition thereto, and arguments and testimony presented at the hearing, it is this 9th day of August, 1996, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. Shaller and Cora E. Shaller, in Contempt of Court is DENIED; and it is further

ORDERED, that judgment be, and is hereby, entered pursuant to the Court's Order dated March 24, 1995 and filed on March 27, 1995 ordering Plaintiffs Herman I. Shaller and Cora E. Shaller to reimburse Defendant Arthur A. Walker for attorneys fees and costs that he incurred in defending the above-captioned litigation; and it is further

ORDERED, that judgment be, and is hereby, entered in favor of Defendant Arthur A. Walker and against

Plaintiffs, Herman I. Shaller and Cora E. Shaller, jointly and severally, in the amount of $3,797.26 and interest from the date of this Order.

/s/ James C. Chapin
THE HONORABLE
JAMES C. CHAPIN
Judge, Circuit Court for
Montgomery County, Maryland

[Received Sep. 18, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. and CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER,
Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT ARTHUR A. WALKER'S OPPOSITION TO PLAINTIFFS' MOTION FOR THE COURT TO EXERCISE REVISORY POWER AND CONTROL OVER THE JUDGMENT OF JUDGE JAMES C. CHAPIN

Pursuant to Rule 2-535, Judge James C. Chapin's Judgment sought to be vacated was obtained as the result of fraud and irregularity under this rule as presented and argued in Plaintiffs' Motion filed in this Court on August 22, 1996.

Responding now to Defendant Walker's Opposition to Plaintiffs' Motion and with specific reference to Ms. Viti's Ex-Parte meeting with Judge Chapin prior to the hearing on 8/8/96, which was improper, Defendant Walker's argument that there is no basis in fact, and no support in the record of that meeting, is in direct conflict with and contrary to Ms. Viti's statement at the Hearing on 8/8/96, when she responded to a question by Judge Chapin as follows:

> "Yes, Your Honor, and I would also reiterate, specifically based on our discussions yesterday, that the order (referring to Judge Thompson's ORDER) says the costs and fees incurred."

Defendant Walker was not present at the Hearing.

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Plaintiff
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106

[Filed Oct. 3, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of Plaintiffs', Herman I. and Cora E. Shaller's, Motion for the Court to Exercise Revisory Power and Control over the Judgment of Judge James C. Chapin entered on August 9, 1996 (Docket #76) and Defendant Arthur A. Walker's Opposition thereto, it is this 30th day of September, 1996, by the Circuit Court for Montgomery County, Maryland.

ORDERED, that Herman I. and Cora E. Shaller's, Motion for the Court to Exercise Revisory Power and Control over the Judgment of Judge James C. Chapin entered on August 8, 1996 (Docket #76) is hereby denied;

/s/ James C. Chapin
Judge, Circuit Court for
Montgomery County, Maryland
Respectfully submitted,

[Filed Oct. 11, 1996]

IN THE COURT OF APPEALS
OF MARYLAND

PETITION DOCKET

No. 282 September Term, 1996

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

and

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

This pertains to Petitioners' filing in this Court on Aug. 22, 1996 copies of documents initiated by Defendant Arthur A. Walker in the Circuit Court after Petitioners filed their Petition for Certiorari on July 1, 1996.

The documents filed were

(1) Transcript of a Hearing in the Circuit Court on August 8, 1996, and

(2) Plaintiffs' MOTION FOR THE COURT TO EXERCISE REVISORY POWER AND CONTROL OVER THE JUDGMENT OF JUDGE JAMES C. CHAPIN ENTERED ON 8/09/96 —DOCKET #76.

Judge Chapin's Judgment was sought to be vacated, pursuant to Rule 2-535(b), because it was obtained as the result of fraud and irregularity as alleged and argued in Plaintiffs' Motion with Exhibits 1-9.

Petitioners now respectfully submit copies of additional documents relevant to the above proceedings filed in the Circuit Court and attached herewith as Enclosures 1-5 as follows:

1. Judge Chapin's ORDER filed Aug. 16, 1996. [Pet. App. 23a.]

2. SUPERSEDEAS BOND IN THE AMOUNT OF $4,176.98 was approved and filed Aug. 28, 1996.

3. Defendant Arthur A. Walker's Opposition To Plaintiffs' Motion filed on or about Sept. 16, 1996.

4. Plaintiffs' Response To Defendant Walker's Opposition To Plaintiffs' Motion filed Sept. 18, 1996. [Pet. App. 25a.]

5. ORDER signed by Judge Chapin filed Oct. 3, 1996. [Pet. App. 27a.]

WHEREAS, Judge Chapin's Judgment (Enclosure 1), entered in favor of Defendant Arthur A. Walker and against Plaintiffs in the amount of $3,797.26 and interest, was obtained as the result of fraud by Defendant Walker and his Attorney Kim Viti, and irregularity by Judge Chapin, and

WHEREAS, Judge Chapin's ORDER (Enclosure 5) failed to acknowledge and indicate consideration to Plaintiffs' Response (Enclosure 4) to Defendant Walker's Opposition To Plaintiffs' Motion (Enclosure 3); whereby, Enclosure 4, which refers to Judge Chapin's Ex-Parte meeting with Ms. Viti prior to the Hearing, is a MATTER OF RECORD acknowledged at the Hearing by Ms. Viti, is discriminatory because Plaintiffs were denied equal opportunity to make arrangements to call witnesses to testify

under oath and to submit evidence as was arranged and agreed to between Judge Chapin and Ms. Viti and concealed from Plaintiffs until revealed at the Hearing.

THEREFORE, Petitioners respectfully note on appeal of the foregoing to this Court which has Jurisdiction of this appeal at this time to vacate the Judgment of Judge James C. Chapin entered on August 8, 1996 (Circuit Court Docket #76).

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Petitioner
for Both Petitioners
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106